IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5289 OF 2006

Smt. Meena P. Singh & anr..... Petitioner

versus

The Head Master
Shri Gyaneshwar Hindi School & ors.... Respondent.

Shri M.S.Lagu for the petitioner
Shri S.P.Thorat for respondent no.3.
Shri A.S.Rao for Respondent 6 to 9
Shri R.M.Patne AGP for State.

CORAM; A.P. DESHPANDE, J.
DATED; 20TH APRIL, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present petitioner no.1 was appointed as a primary school teacher on 10-12-1987 whereas the petitioner no.2 came to be so appointed on 25-1-1986. At the time of initial appointment, the school in question was an unaided school. The school came to be admitted to grant in the year 1999. When the school came to be admitted to grants, a decision had to be reached as to which of the teachers need to be approved to the grantable portion of the school. The Education Officer and the school management carried

the said exercise and granted approval to the teachers including respondent nos. 6 to 9. Aggrieved thereby present petitioners filed writ petition in this court bearing W.P.No.7188/05.

3. It was contended by the petitioners that they were appointed prior in point of time than the respondents 6 to 9 and hence were senior for being absorbed in the aided part of the school. Other contentions were as well put-forth before this court. This court being of the view that all concerned parties need to get full opportunity to put forth their case before the Education Officer, issued directions remanding back the matter for reconsideration before the Education Officer. This court permitted the petitioners to make a fresh representation over and in addition to the representation made earlier and were also permitted to place on record necessary documents which according to the petitioner goes to substantiate their claim.

4. After the remand the petitioner made two submissions before the Education Officer : (i) that as the petitioners were appointed prior in point of time than the respondent nos. 6 to 9 they ought to be treated as senior and (ii) that the respondents 7 and 8 have passed their D.Ed. examination in Marathi medium whereas the school in question imparts

education in Hindi medium. On this premise it was pointed out that respondents 7 and 8 are not eligible for being approved teachers on aided part of the school in view of the government circular dated 20-8-2001 which lays down that a candidate is eligible to be appointed in the medium of instructions in which he has passed his D.Ed. course.

5. The Education officer has rightly held that seniority need to be reckoned not on the basis of the date of initial appointment and continuous officiation, but the same has to be reckoned having regard to the date of acquiring training qualification (acquiring eligibility criteria). This view is backed by a judgment of the full bench of this court reported in **2006 (6) M.L.J. page 682.** Hence to that extent no objection can be raised to the order passed by the Education officer.

6. Coming to the second contention raised by the petitioner in regard to the criteria laid down by circular dated 20-10-2001, though the point was categorically raised in the representation and though the circular was placed on record of the Education Officer, the Education officer has not answered the said issue depending upon the fact finding in relation to medium of instructions of respondents 7 and 8 in

the D.Ed. course. The learned counsel for the respondents are not aware about the medium of instructions of respondents 7 and 8 and hence there is no other alternative but to remand the matter back to the Education Officer for consideration of this issue with a view to find out as to whether respondents 7 and 8 are satisfying the eligibility criteria as laid down in the circular dated 29-8-2001.

7. One more ground is raised in this petition, which was not raised before the Education Officer. The submission in that regard is that the petitioner no.1 is a trained graduate teacher possessing qualification of B.A.B.Ed. and 25% of the teaching staff in Standards V to VII could be teachers who are trained graduate. Reliance is placed on Rule 66 of the Secondary School Code so also the judgment of the Supreme Court in case of **State of Maharashtra and ors. Vs.Tukaram Choudhary and ors. in Civil Appeal No. 863/07 arising out of S.L.P.No.15311 -15331 of 2006.** The petitioner is also placing reliance on the judgment of Kondiba's case. The learned counsel for the petitioner has pointed out that the full bench judgment of this court to that extent is departed from. The point sought to be raised primafacie has the merit and requires serious cosidertion. In this fact situation I deem it appropriate to remand the

matter to the Education Officer for fresh consideration of the issue in the light of the observations made in this judgment. I permit the petitioner to file a fresh representation with a view to substantiate his claim that 25% of the teaching staff admissible to std.V to VII could be trained graduate teachers and as the petitioner no.1 is a trained graduate teacher, is very much eligible and qualified for being approved in the aided part of the school.

8. In the result, the impugned order passed by the Educaiton officer is quashed and st aside. The matter is remanded back to the Education Officer for fresh consideration by permitting the petitioner to file a representation before the Education Officer within a period of four weeks from today. Needless to mention that the Education officer shall take appropriate decision in accordance with the law after affording an opportunity to all the parties of being heard in the matter who are likely to be affected by his decision. The Education officer shall complete the exercise of hearing of the parties and pass the order within a period of three months from the date of receipt of the representation of the petitioner.

9. Rule made absolute in the above terms with no

order as to costs.

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